

**MONTGOMERY COUNTY
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

TOBIN FRIED,
Complainant

v.

Case No. 28-06

**NORBECK GROVE CONDOMINIUM
ASSOCIATION, INC.**
Respondent

**ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION OF
THE HEARING PANEL'S DENIAL OF RESPONDENT'S MOTION FOR
SANCTIONS**

The Hearing Panel has reviewed the Respondent's Motion for Reconsideration of its earlier Denial of Respondent's Motion for Sanctions, and has also reviewed the Motion for Sanctions itself and the Opposition thereto filed by Complainant.

The Hearing Panel dismissed this dispute on October 11, 2006, with prejudice. Under the Montgomery County Administrative Procedures Act, Section 2A-10(f) of the Montgomery County Code, any request for rehearing or reconsideration of an agency's final decision must be filed within 10 days of the date of the decision, except in cases of "fraud, mistake, or irregularity". Respondent's Motion for Sanctions was filed on November 6, 2006, which was well past the time limit of Section 2A-10(f). This motion requested the Hearing Panel to award the Respondent its reasonable attorney's fees in defending itself in this dispute on the grounds of misconduct by the Complainant. Now the Respondent asks the Hearing Panel to reconsider its denial of the motion for sanctions.

Respondent argues that under Maryland case law, there are no strict time limits for its motion; but the cases cited refer to judicial proceedings and not to administrative proceedings such as this. Administrative proceedings are creatures of statute and as such must operate within the limits of the statutes. In *Zoning Appeals Board v. McKinney*, 174 Md. 551 (1938) the Court of Appeals held that an administrative agency that has heard and decided a dispute lacks the authority to reconsider its decision in the absence of fraud, mistake, surprise or inadvertence. However, an administrative agency may reconsider if there is statutory authority for it to do so. See, generally, 2 AM. JUR. 2d, *Administrative Law* Sections 392, 393.

The County's Administrative Procedures Act does not define what constitutes a motion for reconsideration. The available case law does not seem to set any limits on the content of such a motion. The Hearing Panel believes that the Motion for Sanctions is in essence a "motion for reconsideration" under Section 2A-10(f), in that it asks the Panel to modify what was an unqualified dismissal of the case by ordering Complainant to pay Respondent's attorney's fees.

However, the Respondent does not cite, and the Panel does not find, any evidence of "fraud, mistake, or irregularity" that justifies the filing of the Motion for Sanctions after the statutory 10-day limit. Therefore the Panel concludes the motion is beyond the Hearing Panel's powers to grant, *Zoning Appeals Board v. McKinney*, *supra*, at 514.

Were the Hearing Panel to consider the Motion for Sanctions on its merits, the Panel would deny the Motion because the Panel does not believe that the Complainant's conduct in this dispute amounts to misconduct under Section 10B-13 of the Montgomery County Code sufficient to merit the imposition of sanctions; nor does it amount to "fraud, surprise, mistake or inadvertence" under *McKinney*. While the Complainant may ultimately have been mistaken about his legal rights in the matter, he was not represented by an attorney at the time he filed the complaint, and his complaint was not, on its face, without merit. And while it is true, as Respondent points out, that the Complainant rejected mediation, and that under Section 10B-11(f) the Panel has the right to penalize a party who "unreasonably" rejects mediation, the Commission has never ruled that the mere refusal to mediate is "unreasonable" *per se*. On the contrary, the practice of the hearing panels is to inquire into the reasons for rejection if a public hearing is held, and only then to decide if the rejection is so unreasonable as to merit a sanction.

The Motion for Reconsideration is DENIED. All panel members concur.

John McCabe, Panel Chair
January 19, 2007